

R.D. # 0023-99
Linden, NJ

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**AUTOMATED MODULAR
SYSTEMS, INC.¹**

Employer

and

CASE 22-RC-11831

**TEAMSTERS LOCAL 945,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The name of the Employer appears as corrected at the hearing.

² The name of the Petitioner appears as corrected at the hearing.

³ A brief filed by the Employer has been fully considered. No other briefs were filed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴
3. The labor organization involved claims to represent certain employees of the Employer.⁵
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

All full-time and regular part-time machine operators, laborers and scale house operators employed by the Employer at its Linden, New Jersey facility, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.⁶

The parties agree that all full time and regular part-time time machine operators and laborers employed at the Employer's Linden facility should be included in the unit. The parties further agree that office clerical employees, professional employees, guards and supervisors as defined in the Act should be excluded from the unit.

⁴ The Employer, a corporation, is engaged in the recycling and disposal of solid waste at its Linden, New Jersey facility, the only facility involved herein.

⁵ The parties stipulated and, I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

⁶ There are approximately 7 employees in the unit.

In dispute in this proceeding is whether the classification of scale house operators should be included in the unit. The Employer, contrary to the Petitioner, seeks to exclude scale house operators, asserting these employees do not share a requisite community of interest with the other employees. The Employer further asserts that the scale house operators perform confidential management functions, have security responsibilities and are clerical employees who should be excluded from the unit.

The record reveals that the Employer operates a trash transfer facility where trash is dumped, recycled, reloaded into transfer trailers and thereafter delivered to land fills for disposal. In this regard, approximately 150 trucks enter the facility per day, proceeding approximately 200 feet to the scale house trailer where the Employer's two scale house operators are based. Each truck then crosses a scale where the scale house operators record certain information such as the name of the hauler, DEP number, size of the container, whether the container is a roll off or rear loader, and the weight of the trash. Scale house operators also keep track of recyclables in and out, which county of the State the truck came from, the weight of the trailer taken out and to which landfill the trailer has been assigned for disposal.⁷ After recording the initial information, the scale house operators direct the entering truck to proceed to the tipping floor where the trash is dumped.⁸ Trash haulers are charged rates based upon the weight and type of trash transported. Some haulers pay

⁷ The designation of the land fill appears to be recorded on the bill of lading by the scale house operators.

⁸ It appears that the scale house operators may input some of the information that they are responsible for recording into computers, however the frequency and extent of this is not described in the record.

this rate in cash which is initially handled by the scale house operators. The procedures for cash payments are not described in the record. Scale house operators are licensed and certified by the State as weigh masters.

The Employer's machine operators and laborers are involved in the tipping floor operations. The two machine operators operate excavators (garbage loading machines), wheel loaders and bob cats. These machine operators essentially push garbage and load it into trailers. The three laborers⁹ sort through the trash, picking out cardboard, metals, concrete, bricks, dirt and other masonry debris that is recycled. There is no evidence that scale house operators perform any machine operators' or laborers' work. Likewise, there is no evidence that machine operators and laborers perform scale house operators' functions.

The record reveals that laborers have work related contact with scale house operators when, for example, laborers discover an error in the type of trash being sorted from that indicated on the ticket given to them by the truck driver. The laborer then contacts the scale house operator in order to make the necessary change. As indicated above, rates are determined in part by the type of trash involved. The Employer's operations manager testified that this type of contact occurs "a couple of times a month." In addition, scale house operators have work related contact with tipping floor employees when a trailer upon exiting is overweight and has to return to the tipping floor to effect a weight adjustment. The record is confusing as to the frequency of such occurrences as the operations manager stated that this occurs

⁹ Laborers are also referred to as inspectors; one laborer also operates machinery as necessary.

“about two, three times a year compared to 40, about 48-50 trailers.”

Located approximately 100 feet from the scale house trailer are the Employer’s administrative offices that house its office clerical and management operations. There is no evidence that the scale house operators perform any functions in the administrative building.

The record reveals that all employees share common benefits such as medical, dental, vision, vacation, holidays and eligibility for a 401(k) plan. Machine operators, laborers and scale house operators punch a common time clock located in the transfer building located to the left of the scale house, whereas office clerical employees punch a time clock in the administrative building. There are bathrooms and locker rooms available in the transfer building for use by the unit employees sought herein. The record discloses that machine operators earn approximately \$17 per hour, laborers in the range of \$8.50 to \$12 and scale house operators about \$12 per hour. The record does not reflect the pay rates for office clerical employees. Scale house operators receive uniforms from the Employer identical to those of the machine operators and laborers, although the Employer has not required the scale house operators to wear them. Scale house operators, like machine operators and laborers, work from 7:00 am to 4:30 pm. The hours worked by office clerical employees are not described. All machine operators, laborers and scale house operators receive either two pairs of work shoes per year or \$100 allowance towards their purchase.

The Employer in its post hearing brief asserts that machine operators and laborers, unlike scale house operators, are eligible for safety bonuses. The record does not support this assertion as the Employer’s witness, in response to a question as

to whether scale house operators have ever gotten a safety bonus stated “I don’t think so.” I find this response to be equivocal and, therefore, not supportive of the Employer’s contention.

The record reveals that the operations manager, James Maddaluna, is in charge of the Employer’s operations. Reporting to him is the tipping floor foreman, Bob Caruso and the maintenance supervisor, Brian Puchette. The Employer asserts that machine operators and laborers are supervised by Caruso.¹⁰ The Employer asserts that the scale house operators are directly supervised by either operations manager James Maddaluna, Debra Picallo, his daughter or Joann Maddaluna, his wife. Ms. Picallo and Ms. Maddaluna both work in the administrative offices, not the scale house. Ms. Maddaluna oversees all reports generated by the Employer, including the logs maintained by the scale house operators. She also is responsible for checking tonnages, land fill designations and other information gathered by scale house operators. Ms. Picallo fills in for Ms. Maddaluna when necessary, keeps track of recyclables records, performs general office work and inputs information gathered on the scale house operators’ logs into a computer program. Both Ms. Maddaluna and Ms. Picallo answer telephones and perform typing and general filing work in the administrative offices. There is no evidence that office clerical employees ever perform scale house operators’ duties, nor do scale house operators perform general office functions.

¹⁰ The record does not detail Caruso’s authority. The Petitioner would not stipulate that Caruso is a supervisor under the Act nor did it take the position that Caruso is employed in the bargaining unit sought. Operations manager Maddaluna testified that Caruso reports to him. In these circumstances, there is insufficient evidence to support the Employer’s contention that Caruso is a statutory supervisor.

The record does not support the Employer's assertion that Ms. Maddaluna and Ms. Picallo exercise some supervisory authority over scale house operators. In this regard, the Employer admits that they do not have the authority to hire, fire, grant wage increases or time off, or direct or suspend employees. The Employer describes one incident where either Ms. Picallo or Ms. Maddaluna "reprimanded" and issued a written warning to a scale house operator who was involved in an argument with a truck driver. Neither the nature of this reprimand or when it occurred is described. The Employer did not proffer the alleged written warning in support of this contention. Based upon the above, I cannot conclude that scale house operators are separately supervised from the other unit employees sought by the Petitioner, as contended by the Employer.¹¹

The Board customarily excludes office clerical employees from production and maintenance and/or warehouse employees units, while plant clericals are generally included in such units. *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127 (1971); *Westinghouse Electric Corp.*, 118 NLRB 1043 (1957); *Raytee Co.*, 228 NLRB 646 (1977). The distinction between office clericals and plant clericals, however, is not always a clear one because the disputed employees often appear to share characteristics of both groups in the duties they perform and in their working conditions. A controlling factor in making this distinction is whether the disputed clericals perform work that is directly related to, and integrated with, the functional operation of the facility and the duties performed by other unit employees. *Ives*

¹¹ Maddaluna testified that he also exercises direct supervision over the scale house operators.

Business Forms, Inc., 263 NLRB 286, 289 (1982). In making this determination, the Board looks at factors such as whether the clericals have regular contact with unit employees; work in an area adjacent to unit employees; and share common wages, immediate supervision, working conditions, and fringe benefits with unit employees. *American Parts System, Inc.*, 254 NLRB 901, 902 (1981). If such factors are present, the clericals are considered to be plant clericals. *Jacob Ash Co.*, 224 NLRB 74, 75 (1976). If, however, the disputed employees have separate and distinct functions from unit employees; are separately supervised; physically separated; have minimal contact with unit employees; and limited transfer or interchange with unit employees, the clericals are found to be office clericals and excluded from the unit. *Ives Business Forms, Inc.*, *supra*.

The Employer asserts that the two scale house operators do not share a community of interest with the other employees sought by the Petitioner. It further asserts that the scale house operators are clerical employees who in certain circumstances perform confidential management and security functions. In support of this latter contention, the Employer offered to prove that over three years prior to the instant hearing, former scale house operators were involved in a scheme that resulted in the loss to the Employer of approximately \$250,000. I find, in agreement with the Hearing Officer, that this offer of proof was properly rejected as it fails to establish a basis for concluding that scale house operators are engaged in either confidential management functions or in security tasks which would warrant their exclusion from the unit on that basis. In this connection, there is no evidence that scale house operators assist and act in a confidential capacity to persons who formulate,

determine, and effectuate management policies with regard to labor relations, or regularly substitute for employees having such duties. *Ladish Co*, 178 NLRB 90 (1969); *Chrysler Corp.*, 173 NLRB 1046 (1968). Further, there is no evidence that scale house operators enforce against employees and other persons rules to protect the property of the Employer's premises. *Petroleum Chemicals*, 121 NLRB 630 (1958).

The Board has held that employees who are engaged in weighing functions and related record keeping in connection with an employer's production processes, as here, are performing plant clerical rather than office clerical functions. *Central Juncos*, 119 NLRB 493 (1957) (cane weighers who weigh sugarcane delivered by truck or train and then prepare records and reports); *Raybestos Manhattan, Inc.*, 115 NLRB 1036 (1956), (weighers who weigh materials as they come off production machines and record the weights on forms eventually used by the payroll office); *Underwood Corporation*, 107 NLRB 1132 (1954) (weighers who weigh parts for quantity count, record count on route card for stock records and on operator's job ticket).

The cases relied upon by the Employer are distinguishable from the facts in this matter. In *Capital Bakers, Inc.*, 168 NLRB 904 (1967), the Board found that two sales clerical employees who "...work along with two or three clericals in the office adjacent to the manager's office..." were office clerical employees excluded from the unit. As noted above, the scale house operators here do not work in the administrative office and perform no job functions there. In *Manganese Ore Company*, 54 NLRB 1192, 1201 (1943), the Board found that a weighmaster, who was salaried like other clerical employees had interests "...more closely allied with

those of the office employees than with the truck drivers and mechanics' helpers..." sought by the union there. As noted above, scale house operators here are paid hourly, punch the same time clock and share other common terms and conditions of employment with the machine operators and laborers. Based on the above, noting that the scale house operators are engaged in weighing and attendant record keeping and work in proximity to the tipping floor, not in the administrative offices, I find that they are plant clerical employees. Further, noting that scale house operators share similar pay rates, benefits and hours of work, punch the same time clock and have work related contact with other unit employees¹² and that the Petitioner seeks to represent them, I find that the scale house operators share a sufficient community of interest with the other employees sought here and that their job functions are directly related to and integrated with the work of the unit employees. Therefore, they should be included in the unit found appropriate herein. See, e.g., *Fleming Foods, Inc.* 313 NLRB 948 (1994); *L. M. Berry & Co.*, 198 NLRB 217 (1972).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible

¹² Although the nature of this work related contact and its frequency is described in conclusionary and confusing terms by the Employer's witness, it is clear that the contact is pertinent to the Employer's production processes.

to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Employees in the military services of the United States Government may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Teamsters Local 945, International Brotherhood of Teamsters, AFL-CIO.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an

election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102, on or before December 22, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by December 29, 1999.

Signed at Newark, New Jersey this 15th day of December 1999.

/s/ Gary T. Kendellen

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